

**PLANNING COMMISSION
WORKSESSION MINUTES
January 29, 2008
5:30 p.m.**

PRESENT: S.N. Bridge, Chairman
 J. Shomo, Vice-Chairman
 J. Curd
 W. F. Hite
 T. H. Byerly
 K. A. Shiflett
 J. D. Tilghman

STAFF: Dale Cobb, Director of Community Development
 John R. Wilkinson, Zoning Administrator
 Jessica T. Staples, Administrative Secretary

ABSENT: Becky L. Earhart, Senior Planner

Mr. Bridge called the January 29, 2008 Worksession to order.

Mr. Cobb made the following statement: Mister Chairman, before we begin this worksession, I would like to state for the record, that Becky Earhart as a landowner of General Business Zoned property affected by the Adult Business Ordinance, has not participated in the drafting of the ordinance, the staff report, or the recommendation to the Board of Supervisors. She has filed a formal declaration of personal interest form for the official record.

Mr. Cobb stated he would like to welcome Taylor Cole to the Planning Commission, who will be replacing Justine Tilghman. He thanked Ms. Tilghman for her work and dedication to the Planning Commission for seventeen years. Mr. Cobb explained Community Development Staff was asked by the Board of Supervisors to develop an Adult Business Ordinance. He explained the Planning Commission was given four handouts as follows: (1) an amendment to the current Zoning Ordinance pertaining to adult businesses, (2) an ordinance on public nudity, (3) a map showing staff recommendation of a setback of 500 feet from the building, and (4) a map showing staff recommendation of a setback of 500 feet from the property line. Mr. Cobb stated the Planning Commission will make a recommendation on the Zoning Ordinance Amendment, but not the Public Nudity Ordinance Amendment to the County Code. Mr. Cobb stated the amendment is similar to that adopted by the City of Staunton.

Ms. Tilghman asked the need to have the language so specific in regards to diseases, etc.

Mr. Bridge asked why this language needed to be included, when this may be true of other industries.

Mr. Curd stated the reason for the specific language was to add layers of justification. He stated it was not directed at the industry, but more for purposes of justification.

Mr. Wilkinson stated the specifics were evidence and facts from studies showing adverse secondary effects in other localities.

Mr. Cobb stated the previous County Attorney provided staff with a CD-ROM of examples from other localities for staff to review. He stated since adult businesses were being singled out in this ordinance, a reason had to be justified.

Mr. Byerly asked if this could be tested in court.

Mr. Cobb stated the adult business industry is a permitted use in General Business Zoning. He summarized the proposed amendment in the Zoning Ordinance and stated the Adult Business Ordinance refers to definitions in the County Code Section. He stated the County normally does not regulate business operation of hours, but the Board of Zoning Appeals does in many of their Special Use Permit requests.

In regards to the distance of adult businesses from a use of a public park, Mr. Curd asked if this includes public pools, baseball fields, etc.

Mr. Wilkinson stated this would include all public recreational areas.

Ms. Tilghman asked why a greater setback exception was not made for schools.

Mr. Cobb stated consistent language was desired.

Ms. Tilghman asked if other localities made exceptions for schools.

Mr. Cobb stated this information can be reviewed on the maps. Mr. Cobb further stated staff has prepared two recommendations in which the Planning Commission can act on and recommend to the Board of Supervisors. The first being site plan submittal. Mr. Cobb explained in order to have site plan approval from the county, items A – J in the Zoning Ordinance under Adult Business must be displayed or shown on the plan at the time of submittal.

Ms. Tilghman stated there are several items in the ordinance that do not apply to the site plan process.

Mr. Cobb stated the items that will have no bearing on the application will be removed. He further stated in regards to the setback requirements for the new ordinance staff has reviewed appropriate sites and have displayed them on the maps provided. Mr. Cobb explained the first recommendation from the previous County Attorney was a setback of 1,000 feet from all property zoned residential or agriculture. With this recommendation, he stated there were few properties available. The setback was then changed to 500 feet from all property zoned residential or agriculture. The first set of maps (Option A) show the setback distance measured from the building. The second set of maps (Option B) shows the distance measured from the property line.

Mr. Cobb reviewed the first set of maps in which the setback of 500 feet was measured from the building. He stated with this setback, there are approximately 1,500 available acres within the County. The second set of maps with a setback of 500 feet measured from the property line were then reviewed and compared by staff and the Planning Commission. Mr. Cobb explained with a setback measured from the property line, approximately 570 acres would be available for the use of adult businesses. He stated the Planning Commission is asked to make two recommendations to the Board of Supervisors. He explained the Commission can either make a recommendation on option A or B provided by staff or recommend a different option, and provide a recommendation in regards to the site plan approval process.

Mr. Bridge stated he is concerned with the legal challenges that may be faced in using restrictive language (i.e. the required use of security cameras) on businesses such as this, when they are not required with any other type of business.

Mr. Curd asked Mr. Cobb if he was aware of any jurisdictions that were challenged legally on an ordinance similar to this.

Mr. Cobb stated the CD-Rom that was provided by the previous County Attorney will provide examples from other jurisdictions.

Mr. Curd asked if staff had a percentage of total business zoned property available for adult businesses.

Mr. Wilkinson answered the total acreage is available, but not the percentage.

Ms. Shiflett stated she is concerned with the amount of acreage available if a setback of 500 feet was measured from the property line.

Mr. Cobb stated staff feels most adult businesses would open in existing buildings.

Mr. Curd asked if the language in the ordinance was provided from another jurisdiction.

Mr. Cobb answered this ordinance is almost verbatim to ordinance adopted by the City of Staunton.

Mr. Curd asked if other localities have been challenged with using this language. He explained he feels this language is restrictive. He stated it should be clear the ordinance is regulating the properties not the customer. Mr. Curd further asked if staff could provide justification from other jurisdictions.

Mr. Cobb stated he will have the Acting County Attorney provide that information.

Mr. Bridge asked the Commissioners if they had any concerns or comments with the recommendations.

Mr. Byerly stated existing buildings would be the logical place for these types of businesses. He stated he is concerned with limiting their locations and option B would be restricting the amount of acreage.

Mr. Hite asked staff to provide a percentage of available General Business zoned property for adult businesses.

Mr. Cobb stated he agrees with Mr. Hite in the amount of land available under both options should be provided in a percentage amount before the Planning Commission makes a recommendation to the Board of Supervisors.

Ms. Tilghman voiced concern about a greater setback for schools, in that she preferred to not have these types of businesses available within walking distance from middle and high schools.

Mr. Cobb stated he will provide a map to the Planning Commission showing the locations of schools in the County.

Mr. Tilghman stated she is also concerned with the Fishersville interstate business location. She stated if the hospital and Expoland were to be eliminated from the interchange, there may not be enough acreage available to justify the setback.

Mr. Hite asked for a more specific explanation of a school.

Ms. Tilghman answered "child oriented" locations.

Mr. Curd asked staff if there were any other types of businesses in which a license would be revoked or denied because of a felony conviction.

Mr. Wilkinson answered no.

Mr. Bridge questioned the cited examples of ordinances from other jurisdictions.

Mr. Cobb stated he feels confident with the research and information provided by the previous County Attorney.

Mr. Curd stated knowing the percentage amount of available land for adult businesses in the County would be valuable. He further asked if the Acting County Attorney would review and more specifically define the terms "substantial" and "floor area" under the Ordinance.

Mr. Cobb stated he will have the Acting County Attorney review cases in other jurisdictions similar to this ordinance in regards to justifying the language, as well as the restrictive use of items such as security cameras, review and provide a more specific definition of meaning of "substantial" and "floor space" under the Ordinance, provide a percentage amount of General Business zoned property that will be applicable to this ordinance, and show all public and private schools as well as day care centers on the maps with concern for a greater setback.

There being no further business to come before the Commission, the meeting was adjourned.

Chairman

Secretary